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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91175447
Party	Defendant CohereX Medical, Inc. CohereX Medical, Inc. 2302 S. Presidents Drive Salt Lake City, UT 84120  jrichards@wnlaw.com
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Date	03/12/2007
Attachments	001 Answer to Not of Opp.pdf ( 6 pages )(180155 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application Serial No. 77/016,092  
Published in the Official Gazette on January 2, 2007 on page TM 435  
International Class: 10  
Filed: October 6, 2006  
Mark: **COHEREX MEDICAL with design**

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COHERIX, INC.,	)	Opposition No. 91175447
	)	
Opposer,	)	
	)	
v.	)	<b>ANSWER TO NOTICE OF</b>
	)	<b>OPPOSITION</b>
COHEREX MEDICAL, INC.,	)	
	)	
Applicant.	)	

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In response to the Notice of Opposition, dated January 31, 2007, Applicant Coherex Medical, Inc. ("Applicant") hereby answers the Notice of Opposition filed by Opposer Coherix, Inc. ("Opposer") as follows:

**ANSWER TO NOTICE OF OPPOSITION**

Applicant admits that it seeks to register the mark "COHEREX MEDICAL with design" in pending United States Trademark Application Serial No. 77/016,092, for goods described as "medical devices, namely, medical closure devices for treating structural heart disease" in International Class 10 (as "the '092 Application"). Applicant admits that it filed the '092 Application on October 6, 2006.

Applicant admits the '092 Application was published in the Official Gazette on January 2, 2007. Applicant lacks knowledge or information sufficient to form a basis to admit or deny whether Opposer is a Delaware corporation or if Opposer's business address is 3980 Ranchero Drive, Ann Arbor, Michigan 48108, and, therefore, denies such allegations. Applicant admits that the records of the Trademark Trial and Appeal Board appear to indicate that Opposer timely filed the present opposition. Applicant denies that Opposer will be damaged by registration of the mark "COHEREX MEDICAL with Design" and any and all other allegations of the opening paragraphs of the Notice of Opposition.

Applicant hereby answers Opposer's grounds for opposition as follows:

1. Applicant admits that a review of the database of the United States Patent and Trademark Office reveals that Opposer is listed as an owner of United States Trademark Registration No 2,615,937 for the mark "COHERIX" ("the '937 Registration") and that said mark was registered on September 3, 2002. Applicant admits that the '937 Registration claims a date of first use of December 19, 2001. Applicant admits that the goods recited in the '937 Registration are "holographic metrology instruments, computers and computer software, all sold together as a unit, for making non-contact three-dimensional measurements of objects and creating graphic representations of those measured objects." Applicant lacks knowledge whether mark covered by the '937 Registration is in use nation-wide and, therefore, denies the same. Applicant lacks knowledge or information sufficient to form a basis to admit or deny whether Opposer remains the owner of this registration and, therefore, denies the same. Applicant lacks knowledge or information sufficient to form a basis to admit or deny any and all remaining allegations of paragraph 1 of the Notice of Opposition and, therefore, denies the same.

2. Applicant denies the allegations of paragraph 2 of the Notice of Opposition.
3. There is no numbered paragraph 3 to the Notice of Opposition.
4. Applicant denies the allegations of paragraph 4 of the Notice of Opposition.
5. Applicant denies the allegations of paragraph 2 of the Notice of Opposition.

### **AFFIRMATIVE DEFENSES**

By way of defense to the allegations set forth in the Notice of Opposition, Applicant asserts the following:

#### **FIRST AFFIRMATIVE DEFENSE**

Opposer's Notice of Opposition fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Opposer is not likely to be damaged by registration of Applicant's mark and, therefore, lacks standing to oppose registration of the same.

#### **THIRD AFFIRMATIVE DEFENSE**

Opposer has not shown that it is the owner of the asserted marks and, therefore, lacks standing to oppose registration of the Applicant's mark.

#### **FOURTH AFFIRMATIVE DEFENSE**

Any rights Opposer may have in its asserted mark are limited and narrow in scope of protection and, therefore, no likelihood of confusion exists between Opposer's mark as applied to Opposer's goods and Applicant's mark as applied to Applicant's goods.

#### **FIFTH AFFIRMATIVE DEFENSE**

Applicant's use of the mark "COHEREX MEDICAL with design" will not mistakenly be thought by the public to derive from the same source as Opposer's goods, nor will such use be thought by the public to be a use by Opposer or with Opposer's authorization or approval.

#### **SIXTH AFFIRMATIVE DEFENSE**

Applicant's mark in its entirety is sufficiently distinctive and different from Opposer's mark to avoid confusion, deception or mistake as to the source, sponsorship or association of Applicant's goods.

#### **SEVENTH AFFIRMATIVE DEFENSE**

Applicant's mark, when used in connection with Applicant's goods, is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection or association of Applicant with Opposer, or as to the origin, sponsorship, or approval of Applicant's goods by Opposer.

#### **EIGHTH AFFIRMATIVE DEFENSE**

Applicant's mark seeks registration in class of goods and services entirely different from the class claimed in Opposer's registration, and Applicant's mark is directed to an entirely different set of consumers through different marketing channels than Opposer's mark; therefore, no likelihood of confusion exists between Opposer's mark as applied to Opposer's goods and Applicant's mark as applied to Applicant's goods.

#### **NINTH AFFIRMATIVE DEFENSE**

Applicant's unique and arbitrary mark with design is sufficiently distinctive from Opposer's mark so that no likelihood of confusion exists between Opposer's mark and Applicant's mark.


#### **TENTH AFFIRMATIVE DEFENSE**

Opposer's claims are barred by the doctrine of laches, estoppel, acquiescence and/or waiver.

**RELIEF REQUESTED**

In view of the foregoing, Applicant respectfully requests that the relief requested by Opposer be denied, that the Opposition be dismissed with prejudice, and that registration of Applicant's United States Trademark Application Serial No. 77/016,092 be granted.

DATED this 12<sup>th</sup> day of March, 2007.

By:   
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Attorneys for Applicant  
COHEREX MEDICAL, INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was served on Opposer by mailing a true copy thereof to its attorney of record, by First Class Mail, postage prepaid this 12<sup>th</sup> day of March, 2007, in an envelope addressed as follows:

Susan M. Kornfield  
Alan N. Harris  
Angela A. Sujek  
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